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Personnel

**LABOR LITIGATION NON-US CITIZEN
EMPLOYEES (GERMANY)**

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This instruction implements AFD 36-7, Employee and Labor-Management Relations and outlines and implements the provisions of pertinent agreements that govern proceedings before German labor courts and social courts arising from the employment of non-US citizen personnel by the US Forces in the Federal Republic of Germany (FRG). It applies to all US Air Force, and other Department of Defense (DoD) elements serviced by an Air Force Civilian Personnel Flight (CPF) that employ such personnel under the terms of the Collective Tariff Agreement (CTA II) or individual employment agreements related thereto. This instruction does not apply to Air National Guard (ANG) or Air Force Reserve Command Units (AFRC). Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 37-123, Management of Records and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at: .

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

Updates References. Reflects revised delegation of FRG representation in labor and social court litigations (paragraph 3.). Updates office symbols from DP to A1, and the designation of the responsible office of the Controlling and Services Directorate from Defense Cost Administration to Foreign Forces Payroll Office (FFPO).

1. Basic Reference.

- 1.1. Article 44 and Article 56, paragraph 8, Supplementary Agreement (SA) with Germany to the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA).
- 1.2. Para 9, Protocol of Signature relating to Article 56, para 9, SA to the NATO SOFA.

2. General Principles.

2.1. Paragraphs 1.1. and 1.2. establish the jurisdiction of German courts over individual and group disputes arising from the employment of non-US citizen personnel by the US Forces in the FRG. In any litigation, the FRG will act as the nominal defendant or respondent or plaintiff or petitioner for the United States. No agency or member of the US Forces or of its civilian component will formally act as litigant in court cases instituted by or against non-US citizen personnel. Hence, promptly refer any service of process, summons, or other court notification erroneously directed to an agency or member of the United States Air Forces in Europe (USAFE) to the responsible German authority through the servicing Civilian Personnel Flight (CPF).

2.2. Rights or obligations established by decisions, decrees, orders, or compromise settlements originating in court proceedings will accrue to or be met by the United States. The execution of final court rulings will rest with the concerned Air Force activity (see paragraph 5.).

3. Cooperation with German Authorities.

3.1. The US Embassy for the US Forces, and the Federal Ministry of Finance (FMOF) for the FRG have concluded an administrative agreement concerning cooperation between the German authorities and the authorities of the US Forces and their civilian component in the settlement of disputes, (Attachment 2) is the English version of that agreement. Principles to be observed in the application of the agreement are laid down in an exchange of letters (Attachment 3).

3.2. To meet the requirements of reference 1.2. and to prevent the need for individual requests, the FRG has agreed to generally act on behalf of the US Forces in all legal disputes under the German Federal Personnel Representation Law (FPRL) in which an agency of the US Forces or civilian component would be a participant (petitioner or respondent) in proceedings before a labor court.

3.3. For litigations arising in the area of the US Forces, the FMOF has delegated its authority for representation of the FRG in proceedings before labor courts and social courts of all levels to the Ministry for the Interior and for Sports of Rheinland-Pfalz. They have sub-delegated this authority to the Controlling and Services Directorate - Foreign Forces Payroll Office (FFPO) - Kaiserslautern.

4. Policy.

4.1. Supervisors and management officials at all levels will effectively contribute toward keeping labor court disputes to a minimum by strict compliance with governing German law, CTA II (USAFE Pamphlet 36-720, *Tariff Agreements That Apply to Persons Employed by the U.S. Forces in Germany (English Translation)*), and pertinent regulatory publications, maintenance of constructive employee and labor management relations, fair and equitable treatment of employees; and prompt consideration and processing of employee grievances and complaints filed in accordance with established internal procedures.

4.2. Employees will not be encouraged to appeal any personnel or management decision to a labor court. On the other hand, employees resorting to this channel will not be subject to restraint, interference, coercion, discrimination or reprisal. Supervisory personnel will refrain from supporting an employee's appeal to a labor court or prejudicing the official management or command position. Testimony given as a witness, whether in writing or during a court hearing, will be objective, factual, relevant, and precise.

4.3. To the maximum extent possible, employee court appeals found to be justified before the opening of or during legal proceedings will be settled by court compromise or formally documented out-of-court settlement. Final court decisions and decrees will be executed and complied with promptly in order not to put the integrity of the Air Force as an employer at stake.

5. Responsibilities.

5.1. The Chief, Civilian Personnel and Personnel Resources (HQ USAFE/A1C), will:

5.1.1. Exercise staff supervision and provide general guidance in the administration of legal actions covered by this instruction. Action agencies in paragraph 5.2. below may contact HQ USAFE/A1C for advice and assistance at any stage of proceedings, including pre-litigation. HQ USAFE/A1C will be contacted promptly whenever management actions based on specific wording of host country law, collective tariff agreements, USAFE policy or procedural instructions are challenged in court, or whenever there is reason to believe that adverse judgments/decrees are likely to involve controversial or precedent-setting issues with more than local implications.

5.1.2. Determine, and render a decision regarding action-responsibility for processing court cases at the first appellate level, including decision to request initiation of appeal, where permissible, in the issues reported under instructions in last sentence of paragraph 5.1.1. above.

5.1.3. In any case, determine the appropriateness of appeals to the Federal Labor or Social Court, where permissible, and decide on action-responsibility for processing appeals at that level for the command.

5.1.4. Assume or delegate action-responsibility for processing at all labor court levels disputes arising from legal action taken by or against the Command Works Council (CWC) at HQ USAFE under provisions of the FPRL.

5.1.5. Coordinate with the FMOF on all matters that require settlement under Attachment 2, paragraphs 2. or 4.4.

5.1.6. Maintain a reference file of precedent setting appellate court decisions rendered in the area of jurisdiction of the United States or other Sending States Forces (SSF), and advise CPFs of such decisions, as appropriate.

5.2. Commanders delegated authority for civilian personnel administration will, through their CPF, and unless action-responsibility is assumed or retained at HQ USAFE, administer labor and social court litigations at first, second, and, if directed, third level in coordination with the responsible German defense counsel (paragraph 3.3.). This responsibility will include:

5.2.1. Investigation and documentation of underlying causes.

5.2.2. Determination on the validity of an employee's appeal (paragraph 4.3.).

5.2.3. Preparation and timely transmission of defense writs, or petitions in decree proceedings to the defense counsel appointed, or lawyer hired by competent German authorities, (paragraph 3.3.)

5.2.4. Nomination of suitable witnesses and making such witnesses available.

5.2.5. Assistance to the German defense counsel or lawyer before court. Presence of a representative of the CPF in all court sessions is essential to ensure prompt and competent reaction to statements and allegations of the other party in the proceedings, and to provide immediate response to

the court to questions on employment details, working conditions, etc., that are not known to the German defense counsel.

5.2.6. Determination on the feasibility to propose an amicable settlement or the acceptance or non-acceptance of a compromise proposal made by a first level or appellate court. Court compromises which involve precedent setting issues will be concluded on a conditional basis only, and HQ USAFE/A1CP will be consulted as to acceptance or non-acceptance to ensure due consideration of command interests. The same applies to other compromises that involve payments to a plaintiff at an amount exceeding indemnities provided for in the tariff agreement(s).

5.2.7. Preview of judgments or decrees, determining whether appeal, if permissible, should be taken, and requesting responsible German authorities to file appeal, if appropriate. In situations covered by [Attachment 2](#), paragraphs 2. and 4.4., the matter will be referred to HQ USAFE/A1C for action as stated in paragraph [5.1.5](#). There will be no direct contacts between local US Air Force elements and the FMOF on labor litigation other than through HQ USAFE/A1C.

5.2.8. Taking all actions necessary to comply with a binding court decision or decree, and processing bills for costs of litigation in paragraph [7.2](#). below.

5.2.9. On completion of a court case at local or first appellate level, furnishing HQ USAFE/A1CP one copy of any decision or decree on precedent setting issues (see last sentence of paragraph [5.1.1](#)); decisions or compromise settlements on disputes that, before litigation, had been referred to HQ USAFE under formal cooperation or codetermination procedures for negotiation with the CWC; and first appellate court decisions or decrees or locally handled issues on which further appeal to the competent Federal Court is proposed by management or filed by an employee. In the latter case, HQ USAFE/A1CP will be promptly provided advance telephone information on pronouncement of a decision or awarding of a decree to ensure established deadlines for filing an appeal or complaint are met.

5.2.10. Providing HQ USAFE/A1C with all information required by provisions in paragraph [6.2](#).

6. Dissolution of Employment Contract by Court Decision.

6.1. When a German labor court decides that a notice of separation is not socially justified under the terms of the Protection against Dismissal Act, and, hence, does not terminate the employment contract, the employee must be reinstated unless dissolution of the employment contract is approved by the court on request of either management or the plaintiff based on Articles 9 and 10 of the same law. Approval or disapproval of such request is entirely at the discretion of the court and will depend on circumstances of the case. If a request for dissolution is approved, the court will “ex officio” provide for indemnification of the employee at an amount that is basically established in consideration of seniority in employment and age, and may involve payment of up to 18 months’ wages or salaries. In view of established deadlines for filing a dissolution request (Not later than during the last hearing at the first appellate court level) an appropriate determination as to whether continued employment or reinstatement of an employee would be detrimental to the best interests of the employing organization will be made at an early stage of proceedings. As a rule, properly supported requests will be filed with the court of first instance, preferably as part of the initial writ.

6.2. In modification of legal provisions discussed in paragraph [6.1](#)., the US Forces may request dissolution of the employment contract based on paragraph 1 of Article 9 of the Protection against Dismissal Act also “on the ground that the continuation of employment is precluded by military interests

particularly worthy of special protection". In this event, the CPF will immediately inform HQ USAFE/A1CP and provide a statement signed by the responsible commander (paragraph 5.2.) justifying and explaining the reasons for the refusal to continue employment. HQ USAFE/A1C will be the OPR for coordinating and staffing a final determination with concerned staff offices whether the facts and circumstances of the case support this assertion and prepare a written declaration to the court establishing its creditability. In this case, proceedings before the court shall be held in camera. The legal basis for this modification is established in Article 56, paragraph 2, SA to the NATO SOFA, as amended effective 29 Mar 98. It does not apply to members of works councils.

7. Cost of Litigation.

7.1. The FFPO will bill employing Air Force organizations for costs of litigations, which are reimbursable by the US Air Force under paragraphs 8 or 9, and according to procedures in paragraph 12, [Attachment 2](#) to this instruction.

7.1.1. The term "appropriate authority" in [Attachment 2](#), paragraph 9 refers to HQ USAFE. Responsible authorities of the FFPO (paragraph 3.3.) will direct requests for approval of payment to HQ USAFE/A1C before any action is taken that will result in costs, which do not constitute necessary costs of attainment of justice.

7.1.2. The term "appropriate authority" in [Attachment 2](#), paragraph 12., sentence 1, for the purpose of this instruction, refers to the CPF servicing the activity involved in the labor court action.

7.2. The CPF will review the bill to determine whether all cost items are properly specified and documented on vouchers and subject to reimbursement under provisions referenced in paragraph 7.1., if appropriate.

7.2.1. Bills that are considered outside the scope of the agreement, or not properly specified, will be returned to the appropriate German authority with a statement of reasons for the return. Disputes concerning payment of bills, which cannot be resolved at the installation level, will be referred to HQ USAFE/A1C for settlement.

7.2.2. If the bill is found correct, the CPF will execute and sign the following certification:

"I certify that the bill is correct and payable under the terms of the administrative agreement between the FMOF and the US Embassy concerning the cooperation in the settlement of disputes of 30 January/17 April 1967 (USAFEI 36-722, [Attachment 2](#)).

7.2.3. Bills referring to litigations that involve appropriated fund employees or a works council will be forwarded to the appropriate Accounting and Finance Officer for payment, together with the certification prescribed in paragraph 7.2.2. Processing of an SF 1034, **Public Voucher for Purchases and Services other than Personal**, will effect payment. Court costs are properly chargeable to the applicable Operation and Maintenance (O&M) appropriation, Element of Expense/Investment Code (EEIC) - 592. Labor court costs resulting from legal action instituted by or against a works council are chargeable to funds of the installation at which the respective council is established. Fiscal year funds current at the time the court action was finally concluded (that is, the date of entry into effect of an amicable settlement or legal validity of a court decision) will be cited. Costs so incurred will be considered as contractual services and recorded in the cost detail account of the activity involved.

7.2.4. Bills payable by nonappropriated fund instrumentalities (NAFI) will be forwarded to the installation or servicing Nonappropriated Fund Resource Management Flight for payment, together with supporting documentation and the certification executed according to paragraph 7.2.2. Costs are chargeable to the NAFI on whose payroll employees involved were carried. If that activity was dissolved pending court proceedings, the Nonappropriated Fund Resource Management Flight will forward the bill to Director of Services (HQ USAFE/A7S).

ED KRINGER, Colonel, USAF
Director of Personnel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

German Federal Personnel Representation Law (FPRL)

Protection against Dismissal Act

NATO Status of Forces Agreement (NATO SOFA)

AFPD36-7, *Employee and Labor-Management Relations*

USAFE Pamphlet 36-720, *Collective Tariff Agreement, CTA II (Tariff Agreements That Apply To Persons Employed by the U.S. Forces in Germany (English Translation))*

Abbreviations and Acronyms

CPF—Civilian Personnel Flight

CTA II—Collective Tariff Agreement

CWC—Command Works Council

FFPO—Foreign Forces Payroll Office

FMOF—Federal Ministry of Finance

FPRL—German Federal Personnel Representation Law

FRG—Federal Republic of Germany

NAFI—Non-appropriated Fund Instrumentalities

NATO SOFA—NATO Status of Forces Agreement

SA—Supplementary Agreement

SSF—Sending States Forces

USAFE—United States Air Forces in Europe

Attachment 2

ADMINISTRATIVE AGREEMENT FOR SETTLEMENT OF DISPUTES (30 JANUARY 1967/17 APRIL 1967)

Pursuant to Article 44 of the SA to the NATO SOFA concerning the cooperation between the German authorities and the authorities of the US Forces and the civilian component in the settlement of disputes.

1. This Administrative Agreement pertains to disputes.

1.1. Arising from contracts concluded by the German authorities for the account of the authorities of the US Forces or the civilian component (hereinafter referred to as the "Force"), including contracts entered into by the German authorities in accordance with the German-American Administrative Agreements concerning the execution of construction projects.

1.2. Arising out-of-work, personnel representation, or social insurance of civilian labor with the Force, except insofar as the settlement of disputes is controlled by the "Agreement concerning Performance of Payroll Office Functions for Personnel of the European Exchange System (EES)."

1.3. Referred to in subparagraph (c) of paragraph 1 of Article 62 of the SA to the NATO SOFA, i.e., cases in which requisitioning procedures ("Anforderungsverfahren") have been carried out on behalf of the Force under German procurement legislation, with the exception of the Restricted Areas Law and Land Procurement Law.

1.4. Arising from contracts for direct procurement of goods or services by the Force to the extent that they contain no provisions for the settlement thereof and, hence, will be adjudicated in accordance with the second sentence of Article 3 of the Agreement between the FRG and the United States of America on the Settlement of Disputes Arising out of Direct Procurement of August 3, 1959.

2. The German authorities and the authorities of the Force shall at all times closely cooperate in order to settle such disputes. In case of differences of opinion between the German authorities and the authorities of the Force, which cannot be settled on the level of the subordinate agencies, agreement will be reached between Headquarters, United States Army, Europe, APO AE 09403, or Headquarters, United States Air Forces in Europe, APO AE 09094, and the competent highest German federal authorities. This does not affect the instruction under No. 4.4. of this attachment.

3. Whether or not court proceedings are involved, the German authorities shall terminate such disputes only in agreement with the authorities of the Force.

4. Where, as a result of such disputes, court proceedings have been instituted against the FRG as the nominal defendant for the United States, the conduct of the litigation shall be as follows:

4.1. The competent authority of the Force (i.e., Headquarters, United States Army, Europe, APO AE 09403, or Headquarters, United States Air Force in Europe, APO AE 09094, or any agency designated by these headquarters) shall be notified without delay of the lodging of a plaint or the serving of a payment order. In labor and social court cases, this notification shall be addressed to the Civilian Personnel Office of the military district or Air Force installation concerned. The competent authorities of the Force shall be consulted at all material stages of the proceedings. For this purpose, it shall be provided as soon as possible with copies of the documents essential for the litigation, especially the plaint (Klageschrift) or payment order, the replay thereto (Klageerwiderung), appeals (Rechtsmittelschriften), briefs in support of appeals (Rechtsmittelbegründungen), and replies thereto (Rechtsmittelerwiderungen), notification of litigation (Streitverkündigungen), court decisions (gerichtliche Entscheidungen), protocols on the taking of

evidence (Beweisaufnahmeprotokolle), proposals for compromise settlements (Vergleichsvorschläge) and compromise settlements (Vergleiche).

4.2. When concluding a compromise settlement, the German authority shall reserve the right of revocation within an appropriate period and obtain the consent of the authority of the Force. The authority of the Force shall furnish the German authority its decision in due time to allow a declaration of revocation to the court within the revocation period.

4.3. If a decision is issued in favor of the opposing party, the German authority shall examine whether an appeal is admissible and has prospects of success. It shall inform the authority of the Force without delay of its opinion, forwarding a complete copy of the decision and stating the period for lodging an appeal.

4.4. The decision as to whether or not an appeal should be lodged shall be mutually agreed by the German authority and the authority of the Force. Failing agreement, the German authority shall lodge an appeal if the authority of the Force at the highest level confirms its essential interest in such action being taken. The authority of the Force shall not object to the lodging of an appeal if an authority of the FRG at the highest level confirms its essential interest in such action being taken. The party insisting on the appeal being taken shall notify the other party, upon request, as to the reason for such appeal.

5. No. 4. of this attachment applies, mutatis mutandis, with respect to court proceedings instituted by the FRG with the understanding that the principles set forth in No. 4.4. of this attachment shall also be applied to the filing of complaints.

6. No's. 4. and 5. of this attachment apply, mutatis mutandis, with respect to court proceedings for the decision of disputes arising out of the personnel representation legislation (Beschwerdeverfahren) in which the FRG takes part on behalf of the Force.

7. All rights or obligations established in favor of or against the FRG by judgments, decisions, orders, or settlements (vollstreckbare Titel) in court proceedings arising from disputes referred to in No. 1. of this attachment shall accrue to the United States or be met by them.

8. The United States will bear the expenditures, including attorney fees, incurred by the German authorities in connection with these lawsuits and in taking actions pertaining to the execution of judgments, decisions, orders, or settlements as a result of such lawsuits to the extent they constitute necessary costs of attainment of justice (Rechtsverfolgung und Rechtsverteidigung) (Section 91, German Code of Civil Procedure) and provided that their payment can neither be demanded from, nor be enforced against, the other party, and provided, in the latter case, that the bill for expenditure incurred is accompanied by a statement confirming that collection efforts made have failed.

9. Costs which do not constitute necessary costs of attainment of justice will be borne by the United States only if consent has been obtained from the appropriate authority of the Force prior their accrual.

10. Where, solely as a result of an authority of the Federal Republic at the highest level having confirmed its essential interest in the lodging of a plaint or an appeal, the authority of the Force does not object to that action being taken and if the plaint or appeal gives rise to additional costs in the court proceedings, such additional costs shall be borne by the FRG unless otherwise agreed in the case concerned.

11. The United States shall not be responsible for reimbursement of costs of litigation to the extent to which such costs are established to have been incurred as a result of deliberate intention or gross negligence in the conduct of the litigation by the employees acting for the FRG in the litigation.

12. Amounts payable by the FRG to the opposite party as a result of judgments, decisions, orders or settlements (vollstreckbare Titel) and costs of litigation which are reimbursable by the United States, will be requested by the German authorities from the appropriate authority of the Force not later than 3 months after the conclusion of court proceedings. The request shall be documented by attached vouchers. The competent authority of the Force will pay the amount requested within one month after receipt of the vouchers. In case of judgments, decisions, orders or settlements which are enforceable before they become final (vorläufige vollstreckbare Urteile) payment shall be requested and effected if the opposing party requests immediate payment and execution cannot be precluded otherwise. If in these cases a decision obligating the FRG to effect payment is later reversed, the FRG shall take all appropriate measures to obtain a refund of the amount paid; the amounts reimbursed shall be credited to the Force.

13. If the opposing party is obligated to make payments as a result of judgments, decisions, orders or settlements (vollstreckbare Titel) and does not pay voluntarily within an appropriate period, the German authority will seek execution of such judgments, decisions, orders or settlements. The amounts collected will be set off against those amounts reimbursable to the FRG with regard to the same litigation, and or remitted to the Force.

Attachment 3

SELECTION OF LEGAL COUNSEL AND DEFENSE PRINCIPLES

In exchange of letters between the US Embassy and the German Federal Government confirming the administrative agreement ([Attachment 2](#)) the parties agreed to observe the following principles:

1. If in litigations the FRG is to be represented by legal counsel, the selection of counsel is the responsibility of the German authority. In particular cases, the appropriate authority of the Force may recommend the employment of a certain attorney whom it considers to be particularly qualified in the individual case because of this specific knowledge. The German authority will take such recommendation into consideration. If the German authority has objections to employing the recommended attorney, it will inform the authority of the Force of its objections. In the event that differences of opinion in this respect remain between the German authority and the authority of the Force, No. 2 of paragraph 2 of the administrative agreement shall apply unless special arrangements (e.g., in the field of construction matters) already provide for cooperation between the appropriate highest German federal authority and the appropriate authority of the Force in litigations.
2. If the authority of the Force desires that specific procedural steps be taken either in support or in defense of a suit, the German authority will take such request into consideration. If the German authority has objections to taking the measures suggested by the authority of the force, it will notify the authority of the Force of these objections. In the event that differences of opinion remain between the German authority and the authority of the Force, No. 2 of paragraph 2 of the administrative agreement shall also apply in this case unless special arrangements (e.g., in the field of construction matters) already provide for cooperation between the appropriate highest Federal German authority and the appropriate authority of the Force in litigations.
3. If the United States suffers damages attributable to fault by the attorney employed by the German authority, the Federal Republic (FR) shall take all measures in the interest of the United States that are necessary in order to obtain compensation for the damage incurred. The amounts paid will be credited to the US Forces.

Attachment 4

PROCEDURAL REQUIREMENTS FOR PROCESSING COURT CASES AT BASE LEVEL

IF LAWSUIT INVOLVED	THEN			
	Consult HQ USAFE/A1CP	Refer to HQ USAFE/A1CP for action/decision	Inform HQ USAFE/A1CP	Provide copy of decision/decree/compro-mise
1. Application/interpretation of law, collective agreement, or policy, Disputes previously referred to HQ USAFE for negotiation with Command Works Council	Promptly when filed _____	Promptly on receipt of 1st level court decision/ decree	_____ Promptly when filed	On receipt
2. Security dismissal	Prior to declaration in 1st level court (para 6.2.1., basic instruction)		Promptly on service of adverse decision	Within one week from receipt, together with supporting statements/ documenta-tion (para 6.2.3., basic instruction)
3. Conclusion of compromise (only issues specified under 1., and when payments to plaintiff exceed those provided for in the tariff agreement(s) (para 5.2.6., basic instruction)	Prior to final conclusion			

IF LAWSUIT INVOLVED	THEN			
4. Need for coordination with FMOF under para 2 and 4.3., Attachment 1 , and para 5.2.7. , basic instruction		Promptly		
5. Appeal to Federal Labor Court, regardless of issue		Promptly on receipt of 1st appellate court decision		